IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO.133 OF 1998

Dhanraj Sobachand Sakhariya
R/o 826, Budhwar Peth,
Pune-2 ...Applicant.
V/s.
1.The State of Maharashtra
2.Smt.Meena Dilip Paigude
3.Shri Dilip Madhavrao Paigude ...Respondents.
Both R/o.1st floor, Yog Bungalow,
Chandu Nagar, Padmavati,
Pune.

Shri Pramod Kathane h/for Shri Deepak Girme, advocates for the Applicant.

Smt.R.M.Gadhvi, APP for the Respondent No.1/State.

CORAM: J.H.BHATIA, J.
DATE : 28th February, 2007.

ORAL JUDGMENT:

1. Heard Mr.Pramod Kathane, the learned counsel for the applicant. None for the respondent nos.2 and 3. Perused the record.

2. This revision application is filed by the original complainant, being aggrieved by the judgment and order passed by the VIth Additional Sessions Judge, Pune in Criminal Appeal No.58 of 92 allowing the appeal and setting aside the order of conviction and sentence passed by the J.M.F.C., Pune in Regular Criminal Case No.1235 of 1985.

3. Case of the complainant in brief, is that respondent nos.2 and 3, who are the original accused nos.1 and 2 respectively, are husband and wife interse. Accused no.2 is a tax consultant, while the accused no.1 is carrying on business as a builder and promoter. On 14-10-1980 representation was made by the accused persons that they were constructing a building on Plot No.7, C.T.S.No.1215/2 of Bhamburda, Shivajinagar, Pune and they agreed to sell flat no.1 in the said building to the complainant for the consideration of Rs.1 lakh, who paid the full consideration to them, at the time of agreement for sale itself. They executed an agreement for sale in his favour. As the accused persons failed to deliver possession of the flat, the complainant filed Special Civil Suit No.618 of 1983 for the specific performance of the contract. However, during the pendency of that suit, the accused persons sold away that flat to Mr.R.S.Nair on 7-7-1984 and handed over the possession of the flat to him. According to the complainant, the accused persons had, thus, cheated him and also refused to re-pay Rs.1 lakh to him. They have also committed the offence under the provisions of Maharashtra Ownership Flats and Apartment Act, 1963 (In brief 'MOFA Act'). With these allegations, he filed the complaint under Section 420 read with Section 34 of the

I.P.C. and Section 13 of the MOFA Act. Charges were framed against the accused persons. They pleaded not guilty. They denied that there was any agreement for sale of the flat. According to them, it was simple money lending transaction between the complainant and the accused no.1. The complainant examined 4 witnesses including himself. Relying on the evidence led by the complainant and rejecting the defence story, the learned J.M.F.C. convicted both the accused persons under Sections 420 read with Section 34 of the I.P.C. and under Section 13 of the M.O.F.A.Act. The accused no.1 was directed to undergo S.I. for one month and to pay fine of Rs.500/- on each count while the accused no.2 was sentenced to undergo S.I. for six months and to pay fine of Rs.1,000/- on each count.

4. The accused persons challenged the judgment and order of conviction and sentence in appeal no.58 of 1992. After hearing the parties, the learned VIth Additional Sessions Judge, set aside the order of conviction and sentence and acquitted both the accused for the said charges.

5. The learned Additional Sessions Judge noted that the accused no.2 was not even party to the alleged agreement for sale. The said document was executed by

the accused no.1 alone. She admitted to have received the amount but as a loan and not as a consideration of the flat. The learned Additional Sessions Judge also noted that according to admission of the complainant, on 14-10-1980 itself, he had also given a loan of Rs.76,000/- for carrying out construction activity and for recovery of that amount, he had filed suit, which was decreed. On the same day, he also claimed to have paid an amount of Rs.1 lakh to the accused no.1 towards the full consideration of the flat no.1. It was surprising that without taking possession and without getting sale deed executed, he paid full consideration in advance. If it was a real sale transaction, on payment of full consideration, he could get sale deed executed and could also get the possession immediately. It was also noted that the complainant filed civil suit no.618 of 1983 in the Court of Senior Division for specific performance of the contract on the basis of disputed agreement. That suit has been dismissed. Thus, the complainant could not prove even before the Civil Court that it was infact a agreement for sale. Taking into consideration all the circumstances, the Additional Sessions Judge found that it was money lending transaction and, therefore, the alleged offence of cheating was not committed.

6. Taking into consideration the facts and the circumstances noted above, I find no fault in the impugned judgment and order passed by the Appellate Court.

7. Further it may be noted that in revision, order of acquittal can not be converted into one of conviction in view of specific bar under Section 401(3) of the Cr.P.C. At the most in revision against acquittal, the High Court may remand the matter for fresh trial or hearing only if there is procedural defect, proper opportunity of hearing is not given or the complainant has been shut out from leading necessary evidence or if his oral or documentary evidence is not taken into consideration. The impugned judgment passed by the Appellate Court does not suffer from any of these infirmities and therefore, question of remanding the matter for fresh hearing does not arise.

8. In view of the above circumstances, I find no substance in the revision and the revision application stands dismissed.

(J.H.Bhatia,J.)